

REMARKS

Claims 1, 13, and 28 have been amended. Support for the amendments may be found throughout the original disclosure, including original claims 2, 3, and 29 and paragraph 8. Claims 2, 3, and 29 have been cancelled.

Claims 1, 4-28, and 30-54 remain pending.

Rejection Under 35 U.S.C. § 103(a) over Watkins in View of Frisk

Claims 1-27 have been rejected as unpatentable over Watkins, WO 02/36196A1 in view of Frisk, U.S. Patent 6,117,541. Applicants respectfully traverse the rejection.

The Frisk patent teaches incorporating nanometer size clay particles I into a polyolefin food package. Column 1, lines 16-20; column 2, lines 16-25. The package may have a coating of SiO_x and may be bonded to another polymer layer, a paper layer, or a cardboard layer. Column 2, lines 26-50. "In addition to enhancing the barrier properties of containers the clay platelets also enhance the heat stability and mechanical properties of the container. . . . The integrated clay platelets also increase the stiffness of the container Therefore, even small weight percentages of the clay material relative to the polymer material provide substantial increases in the impermeability of the integrated polyolefin layer, and in the overall properties of the container." Column 4, lines 13-28 (reference numerals omitted). Thus, the Frisk patent, while including its nanometer size clay platelets for enhanced barrier properties, also acknowledges that including its nanometer size clay platelets also substantially increases the stiffness of its container. Thus, the Frisk patent teaches away from so modifying articles for which increased stiffness is undesirable.

The Watkins publication teaches that flexibility is needed in certain membrane publications. Thus, one would be led away from applying the Frisk teachings because the increased stiffness would be undesirable in the Watkins applications.

The Office Action argues that the “overwhelming purpose of adding the platelets is to increase the gas barrier properties of the film.” Still, overwhelming purpose or not, the Frisk patent *as a whole* teaches away from making such a modification should one desire to avoid increased stiffness.

Further, the Office Action tries to read into the Frisk reference a distinction between how much of the clay platelets is need for increased barrier properties and how much will give increased stiffness. The paragraph quoted above simply does not countenance such a distinction; it teaches that the disclosed changes all occur at even small weight percentages of the clay (“*and in the overall properties of the container*”) (emphasis added).

The citation of *In re Keller* is not on point. Of course a nano-filler is combinable with a fluid barrier layer of the Watkins film. That’s Applicants’ invention. But the art would not have suggested making the combination because the person of ordinary skill would be led away from making such a combination where a flexible membrane is desired.

Accordingly, Applicants request that the rejection be withdrawn and the claims be reconsidered.

Rejection Under 35 U.S.C. § 103(a) over Watkins in View of Frisk, Fibiger, and Bagrodia

Claims 28-54 have been rejected as unpatentable over Watkins, WO 02/36196A1 in view of Frisk, U.S. Patent 6,117,541 and further in view of Fibiger et al., WO 00/47657 and Bagrodia et al., WO 01/92388A2. Applicants respectfully traverse the rejection.

Applicants submit that the combination of the Watkins and Frisk references fails to suggest the subject matter of these claims for the reasons already given in the last Reply and the further reasons above. Neither the Fibiger publication or the Bagrodia publication would overcome the firm teaching of the Frisk patent that including its clay nanofiller stiffens an article, a result unacceptable where resiliency is paramount.

Accordingly, Applicants request that the rejection be withdrawn and the claims be reconsidered.

Obviousness-Type Double Patenting

Claims 1-54 have been provisionally rejected under the judicially-created doctrine of obviousness-type double patenting over claims 20-25 of copending Application No. 09/704881 in view of Frisk, U.S. Patent 6,117,541.

Applicants respectfully postpone any action until such time as the referenced application should actually issue before this application.

CONCLUSION

Applicants believe that the claims are in condition for allowance, and an early allowance of the application is earnestly requested.

The Examiner is invited to telephone the undersigned if it would be helpful for resolving any issue.

Respectfully submitted,

A handwritten signature in cursive script, reading "Anna M. Budde", is written over a horizontal line.

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June 12, 2006
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